IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 464 of 1990

The State of Maharashtra. .Appellant

vs

Ashok Dhondiram Bahirat
residing at 523 Gawaliwada
Khadki Bazar, Pune. Respondent.

Smt V.R. Bhonsale, Addl Public Prosecutor for Appellant

Mr.P.M.Saikumar for respondent.

CORAM: V.G.PALSHIKAR, Acg, C.J. &
SMT NISHITA MHATRE , J.

DATE:SEPTEMBER 13, 2006.

JUDGMENT: (PER PALSHIKAR Acg, C.J.)

This appeal by the State of Maharashtra is directed against the order of acquittal recorded by the 5th Additional Sessions Judge, Pune in Sessions Case No.352 of 1989 on 11th April, 1990.

1. With the assistance of the learned Additional Public Prosecutor and the learned advocate for the respondent-accused we have scrutinised the record and reapprecited the evidence on record. The prosecution case as disclosed by the

evidence on record stated briefly is that the accused and deceased Shivaji were in service of Ammunition Factory, Khadki, Pune and both were living near to each others at Gawaliwada, Khadki Bazar, Pune. About one year before the incident, the accused told the deceased Shivaji to construct house jointly, to which, the deceased Shivaji shown his financial difficulties and so there was dispute between them. One Meena who happened to be the relative of the the accused, was visiting the house of the deceased Shivaji. Therefore, the accused was abusing the deceased Shivaji and his family members.

2. On 22.5.1989 at about 7.30 a.m, the deceased Shivaji as usual, left his house for attending job at Ammunition Factory, Khadki. At that time, the accused abused him. The deceased was in hurry, so he did not give hint to accused and straight way went away. In the evening, at about 5.30 p.m., the deceased returned from the place of his service. The deceased Shivaji and his wife i.e. complainant Prabhavati decided to go to the accused and inquired why he abused them and accordingly they went to the accused's house at about 6.30 p.m. They inquired with the accused as to why he abused them. There was exchange of words between them. At that time, the accused went inside the house and returned

back with large knife (dagger). He gave blow of dagger to the left arm of the deceased due to which the deceased received bleeding injury.

3. The prosecution examined 7 witnesses to prove its case that the accused murdered the victim. The learned trial judge on appreciation of the evidence on record came to the conclusion that there are serious lacunae in the evidence as led by the prosecution. He found the evidence of witness exaggerated and, therefore, he proceeded to acquit the accused. The State came in appeal and this appeal is pending in this Court since 1990. A period of 16 years has lapsed. All these years the accused was on bail and, therefore, the appeal was not given precedence for hearing.

4. The first contention raised on behalf of the accused-respondent was therefore that the order of acquittal which is not perverse need not be reversed after 16 years merely because a different conclusion or appreciation of evidence is possible. According to him irreparable loss would be caused to the accused if after 16 years he is jailed for something which the Court of competent jurisdiction found has not having been done by it. We are unable to accept this

argument. The Supreme Court has very categorically held in the decision reported in AIR 1981 SC 1675 (State of Maharashtra vs Champalal Punjali Shah) that merely because a considerable delay has taken place in hearing the appeal, cannot be a reason for not interfering with the order of acquittal if at the time of hearing it is demonstrated that the order is perverse. To the similar effect is the judgment of the Supreme Court reported in AIR 1996 SC 3041 (The State of Karnataka vs Moin Patel and ors). In our opinion, this aspect of law is therefore settled. We cannot, therefore decline to interfere solely on the ground of delay in hearing of the appeal.

5. The law as regards appreciation of evidence by the appeal court whether it is a case of an appeal against acquittal or an appeal against conviction, is also settled. There cannot be any distinction in the matter of appreciation of evidence according to the nature of the opinion. The standard to be applied for appreciation of evidence cannot vary because of the nature of the opinion. It cannot be said that the aforesaid yard stick of appreciation of evidence in the case of acquittal would be different than those for appreciation of evidence against conviction.

6. Yet another position settled in law by several decisions of the Supreme Court is the basic tenets of criminal jurisprudence which assumes a person to be innocent till the guilt is proved and an order of acquittal delivered by a court of competent jurisdiction strengthens that presumption of innocence and, therefore, in an appeal against acquittal, the appeal court should interfere with the finding of the trial court of acquittal only when it comes to the conclusion that the appreciation of the evidence by the trial court is either perverse or illegal and, therefore unsustainable in law.

7. Yet another principle of law which is settled by the Supreme Court of India is that where two views on a set of evidence are possible on proper appreciation of evidence, the view which is favourable to the accused should be accepted if it is accepted, it should be affirmed by the appeal court. The decisions in this regard are:

(i) 1993 SCC (Criminal) 767- (Mool Chand vs Jagdish Singh Bedi)

(ii) AIR 2002 SC 2821-

(iii)1991 Cri. L. J. 2666 (Harendra Narain Singh vs State of Bihar)

(iv)1995 Cri.L.J.3002(State of H.P. vs Diwana and ors)

(v)1996 Cri. L.J.2626(Pravakar Pati vs Ajaya Kumar Das and anr)

(vi)2000 Cri.L.J. 4893 (Omankuttan alias Biju and Binu T and ors vs State of Kerala)

(vii)AIR 1973 SC 2773 (Kali Ram vs State of Himachal Pradessh)

(viii)1983 Cri.L.J.1038 (Charuprava Dei vs Duryodhan Mohanty and ors)

(ix)1984 Cri. L. J 1738 (Sharad Birdhichand Sarda vs State of Maharashtra).

In all these cases it is accepted as a sound presumption of law that existence of a view favourable to the accused in the case of two possible views on reasonable appreciation is liable to be affirmed in appeal against acquittal.

8. A Division Bench of our High Court has also taken into consideration several decisions of the Supreme Court in relation to appreciation of evidence in an appeal against acquittal

wherein consistently it has been held that for interfering with an order of acquittal, reasons must be substantial and weighty. This decision is in the case of State of Maharashtra vs Haribhau Krishnaji Deshmukh and ors, reported in 2003(4) Mah. L.J. 1060

We have to keep these settled principles in law in mind while dealing with this case.

9. P.W.1 Prabhavati, P.W.2 Vinayak and P.W. 3 Deepak are all three eye witnesses to the assault. All of them state that there was enmity between the accused and the victim, that there was verbal altercation in them in the evening as a result of which accused brought a knife and stabbed the victim once in the arm. This evidence is corroborated by the medical evidence given by the doctor P.W.4. The learned trial judge had appreciated this evidence but observed that there were certain basic lacunae in it which creates doubt in the mind of a reasonable man regarding correct state of affairs leading to the occurrence of the assault. The information about the incident was given by the accused by going to the police station yet that statement is not recorded as first information report. It was verified by the police and then th first information report was registered. Why this procedure was adopted is not explained by

the prosecution. The learned judge also found that there are discrepancies and contradictions in the evidence of eye witness P.W. 1 Prabhavati, who accompanied the victim and it was on hearing the altercation between the accused and the victim that P.Ws 2 and 3 stopped doing work that they were doing and came to the front of the accused's house. Admittedly the case of the prosecution is that there was only a single blow dealt by the accused. The deposition of P.W 1. Prabhavati does mention that Vinayak took the accused inside the house of the accused and chained the door from outside. She also states that Vinayak, Deepak and herself took the injured to Rubi Nursing Home but she does not say that she saw Vinayak and Deepak were present when the stab blow was given by the accused. P.W. 2 Vinayak claims to be an eye witness and that he and Deepak took the deceased in a autorikshaw to Rubi Nursing Home. According to this witness P.W.1, wife of the deceased came to the Rubi Nursing Home after half an hour whereas she says that she accompanied the deceased. P.W. 3 Deepak does not say about the presence of P.W.1 and her accompanying with others to Rubi Nursing Home. According to the learned trial judge, therefore, this evidence did not prove beyond reasonable doubt that the accused wanted to murder the victim. Maximum that could be concluded from this evidence is that

there was enmity between the two and the accused in rage stabbed the victim in his left arm. Looking to the enmity and the injury caused the learned trial judge was right in coming to the conclusion that the prosecution has failed to prove that the accused intended to cause murder or death of the victim. It also cannot be said that he intended to cause such bodily injury as is likely to cause death. In such circumstances the only possible view is that the stab was with an intent to cause simple hurt. The learned trial judge did not accept that view because according to him the contradictions in the evidence of witnesses did not warrant such inference. In these circumstances it cannot be said that the view taken on appreciation of evidence by the learned trial judge that the accused deserves to be acquitted, is in any manner, illegal or perverse. Consequentially, keeping in mind the settled position in law as noted above, we feel that the interest of justice requires that the appeal against acquittal is dismissed, maintaining the order of acquittal passed by the trial judge on consideration of the evidence on record. Appeal accordingly dismissed.